

Application Number 10/016,507
Amendment dated October 29, 2004
Responsive to Office Action mailed August 3, 2004

REMARKS

This amendment is responsive to the Office Action dated August 3, 2004. Applicants have amended claim 14 for purposed of clarification. Claims 1, 2, 4-18, 20-26, 28-42, and 44-64 are pending.

Applicants thank the Examiner for withdrawing the 35 U.S.C. § 112, second paragraph rejections which were made against claims 34 and 35 in the last Office Action.

Applicants also thank the Examiner for withdrawing the 35 U.S.C. § 102 rejections which were made against claims 14, 21-27, 29, and 42 in the last Office Action.

Claim Rejection Under 35 U.S.C. § 102

In the Office Action, the Examiner rejected claims 1, 2, 4-6, 9 and 10 under 35 U.S.C. 102(b) as being anticipated by Faisandier (US 5,800,473). Applicants respectfully traverse the rejection. In order to support an anticipation rejection under 35 U.S.C. 102(b), it is well established that a prior art reference must disclose each and every element of a claim. This well known rule of law is commonly referred to as the "all-elements rule."¹ If a prior art reference fails to disclose any element of a claim, then rejection under 35 U.S.C. 102(b) is improper.²

Faisandier (US 5,800,473) fails to disclose each and every limitation set forth in claims 1, 2, 4-6, 9 and 10, and provides no teaching that would have suggested the desirability of modification to include such features. For example, Faisandier fails to teach or suggest a system for communicating medical information, comprising a medical device installed with a version of software and a software agent communicatively coupled to the medical device for interacting with the medical device, wherein the software agent interacts with the medical device *irrespective of correspondence with the version of software installed on the medical device*, as required by Applicants' claim 1. Therefore, Faisandier fails to establish a prima facie case of anticipation with respect to claim 1 and claims 2, 4-6, 9 and 10 that depend from claim 1.

¹ See *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 231 USPQ 81 (CAFC 1986) ("It is axiomatic that for prior art to anticipate under 102 it has to meet every element of the claimed invention.").

² *Id.*; see also *Lewmar Marine, Inc. v. Barient, Inc.*, 827 F.2d 744, 3 USPQ2d 1766 (CAFC 1987); *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (CAFC 1990); *C.R. Bard, Inc. v. MP Systems, Inc.*, 157 F.3d 1340, 48 USPQ2d 1225 (CAFC 1998); *Oney v. Ralliff*, 182 F.3d 893, 51 USPQ2d 1697 (CAFC 1999); *Apple Computer, Inc. v. Articulate Systems, Inc.*, 234 F.3d 14, 57 USPQ2d 1057 (CAFC 2000).

Application Number 10/016,507
Amendment dated October 29, 2004
Responsive to Office Action mailed August 3, 2004

In regard to claim 1, the Examiner characterized Faisandier as describing a system for programming an implantable medical device that is "[programmed with a list of objects 230 having many potentially different versions (Fig. 1)." The Examiner asserted that because the programmer of Faisandier "is equipped with 'basic minimum software', it has no trouble communicating with the implantable medical device 200 (col. 2, lines 63-64)." However, Faisandier does not teach or suggest a software agent interacting with a medical device *irrespective of correspondence with the version of software installed on the medical device*, as recited by Applicants' claim 1. Quite to the contrary, Faisandier requires that the programmer first be made compatible with the software version of the implant before the programmer can communicate with the implant. In fact, Faisandier states "the programmer downloads as much or as many of the implant objects as is necessary to become fully compatible with the implant. As a result, the system is able to update the programmers." Faisandier, col 4, ll. 10-15 (emphasis added). "After this updating phase, the programmer has all of the objects needed to be compatible with the implant, and can call all data (235 or 236) contained in the implant, to display the desired results, re-program the implant, etc. in the conventional manner" Faisandier, col. 6, ll. 13-18 (emphasis added).

From the above passages, it is clear that communication in the Faisandier system requires that the programmer first be updated to become fully compatible with the implant, and does not support interaction *irrespective of* correspondence to the version of installed software. Hence, Faisandier does not describe interaction between a software agent and a medical device regardless of correspondence between versions of software, but instead teaches altering a software agent to conform to the version of software installed on the medical device. Therefore, Faisandier is directly at odds with the requirements of Applicants' claim 1.

In summary, Faisandier does not disclose or suggest all of the features of Applicants' claim 1. Therefore, Applicants respectfully request withdrawal of the rejection. Claims 2, 4-6, 9 and 10 depend from independent claim 1. For at least the reasons discussed above with respect to claim 1, dependent claims 2, 4-6, 9 and 10 are also in condition for allowance. Allowance of claims 2, 4-6, 9 and 10 is therefore respectfully requested.

Application Number 10/016,507
Amendment dated October 29, 2004
Responsive to Office Action mailed August 3, 2004

Allowable Subject Matter

In the Office Action, the Examiner indicated that claims 8, 14-18, 20-26, 28-42, 44-58 and 62-64 are allowable in their present form, and objected to claims 7, 11-13 and 59-61 as including subject matter that would be allowable if rewritten in independent form. For at least the reasons discussed above, claims 7, 11-13, and 59-61, dependent from claim 1, are in condition for allowance.

Amended Claims:

In this Amendment, Applicants have amended claim 14 for purposes of clarification.

CONCLUSION

All claims in this application are in condition for allowance. Applicants respectfully request reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

October 29, 2004
SHUMAKER & SIEFFERT, P.A.
8425 Seasons Parkway, Suite 105
St. Paul, Minnesota 55125
Telephone: 651.735.1100
Facsimile: 651.735.1102

By:

Kari Bartingale
Name: Kari H. Bartingale
Reg. No.: 35,183